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No. 93-1893

In the

Supreme Court of the United States

October Term, 1993

C. I. STROUD,

Petitioner,

v.

DEBORAH SHAW, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF OF THE STATES OF MARYLAND, ALABAMA, ALASKA, ARKANSAS, CALIFORNIA, COLORADO, FLORIDA, HAWAII, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MAINE, MINNESOTA, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NORTH DAKOTA, OHIO, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, VERMONT, VIRGINIA, WYOMING AND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Can an individual's failure to supervise a subordinate "cause" the deprivation of a right protected under 42 U.S.C. § 1983 when (a) the supervisory relationship terminated fifteen months prior to the subordinate's actions inflicting the plaintiff's injuries, and (b) the subordinate's current supervisor is found not liable under § 1983?

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Pursuant to Sup.Ct.R. 37, the twenty-nine (29) signatory States and the Commonwealth of the Northern Mariana Islands respectfully submit this brief as *amici curiae* in support of petitioner.

INTEREST OF *AMICI CURIAE* AND INTRODUCTORY STATEMENT

This case presents important questions concerning the continuing liability of government officials for civil rights violations that former subordinates commit long after the termination of the supervisory relationship. Review is warranted to clarify the circumstances in which individual government officials may be held liable in damages for the acts of their supervisees.

In holding that a supervisor may be responsible under 42 U.S.C. § 1983 for a former subordinate's actions that occur fifteen months after the supervisor's transfer, the Fourth Circuit applied a tort theory of causation that imposes substantial social costs at the expense of effective and efficient government. That decision is of major significance to the states because it represents an unprecedented expansion of civil rights liability for state and local government officials, threatens the core of the states' ability to dispatch their own internal affairs, and implicates fundamental principles of federalism.

The civil rights claim in this case hinges on whether a supervisor can "cause" an individual to be deprived of his rights protected under § 1983 solely by failing to supervise a subordinate whose actions fifteen months after the supervisor's departure form the basis of the § 1983 claim. That issue involves "an important question of federal law which has not been, but should be, settled by this Court," Sup.Ct.R. 10.1(c), as this Court has never directly addressed the scope of individual supervisory liability under § 1983. Moreover, the Fourth Circuit has decided this federal question "in a way that conflicts with applicable decisions of this Court,"

Sup.Ct.R. 10.1(c), as this Court's rulings in the related contexts of municipal liability and *Bivens* actions suggest strongly that there must be a direct affirmative link between a supervisor's inactions and the injury complained of for liability to attach. No such causal connection can exist when, as in this case, the ability to supervise the acts of another ends months before the conduct giving rise to the claim. Indeed, this Court has previously recognized that the passage of an even shorter period of time than the fifteen month lapse in this case rendered an injury too remote with respect to the previous actions of state officials for purposes of imposing § 1983 liability. *See Martinez v. California*, 444 U.S. 277, 284-85 (1980). No constitutionally sound reason exists for applying a different theory of causation when addressing the connection between the alleged inactions of supervisory state officials and a plaintiff's injury.

In the absence of any controlling Supreme Court case, the federal appellate courts have adopted a variety of approaches, which are not altogether consistent, in attempting to resolve the issue of individual supervisory liability under § 1983. *See, e.g., Haynesworth v. Miller,* 820 F.2d 1245, 1260-62 and notes 123-133 (D.C. Cir. 1987) (citing cases). One of those courts -- the Fourth Circuit in this case -- has now decided that issue in a way that seriously tests this Court's past observation that "it is perfectly clear that not every injury in which a state official has played some part is actionable under that statute." *Martinez v. California*, 444 U.S. at 285. This Court should grant review to address the circumstances in which individual government officials are to be held responsible for the injuries that their subordinates inflict.

REASONS FOR GRANTING REVIEW

THE DECISION BELOW CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT IN IMPOSING SUPERVISORY LIABILITY DESPITE THE LACK OF ANY AFFIRMATIVE LINK BETWEEN THE SUPERVISOR'S ACTIONS AND THE PLAINTIFF'S INJURY.

This Court has never squarely decided the scope of individual supervisory liability in the context of a civil rights claim that is based on a government official's alleged deliberate indifference to a plaintiff's constitutional rights. Nevertheless, the rationale of this Court's prior decisions in § 1983 municipal liability cases and actions brought under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), makes clear that an individual cannot be held civilly liable for the injuries that a former supervisee inflicts months after the supervisory relationship ends.

Section 1983 imposes liability if a person "subjects, or causes to be subjected," another person to the deprivation of a federally protected right. This Court in *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978), held that this language does not "impose liability vicariously on governing bodies solely on the basis of the existence of an employer-employee relationship with a tortfeasor." *Id.* at 692. Indeed, "vicarious liability would be incompatible with the causation requirement set out on the face of § 1983." *St. Louis v. Praprotnik*, 485 U.S. 112, 122 (1988). Rather, liability attaches only when the conduct or policy complained of is "the moving force of the constitutional

violation. . . ." *Monell*, 436 U.S. at 694.

Consistent with its recognition that *respondeat superior* liability is inapplicable in actions brought under § 1983, "the Court repeatedly has stressed the need to find a direct causal connection between municipal conduct and the constitutional deprivation." *Springfield v. Kibbe*, 480 U.S. 257, 267 (1987) (O'Connor, J., dissenting), *citing Oklahoma City v. Tuttle*, 471 U.S. 808, 824-25, n.8 (1985); *Polk County v. Dodson*, 454 U.S. 312 (1981). In *Pembaur v. Cincinnati*, 475 U.S. 469 (1986), for example, the plurality held that the municipal defendant could be held liable for the policymaking decision of the county prosecutor because that decision "directly caused the violation of petitioner's Fourth Amendment rights." *Id.* at 484. Similarly, in determining whether a municipality may be held liable for deficiencies in the training of its personnel, this Court has insisted that "[t]here must at least be an affirmative link between the training inadequacies alleged, and the particular constitutional violation at issue," *Oklahoma City v. Tuttle*, 471 U.S. at 824 n.8, and emphasized that "the identified deficiency in a city's training program must be *closely related* to the ultimate injury." *Canton v. Harris*, 489 U.S. 378, 391 (1989) (emphasis added).

In subsequently explaining its rationale in these decisions, this Court stated that "[i]t was necessary to analyze whether execution of a municipal policy inflicted the injury in these cases because, unlike ordinary tort litigation, the doctrine of *respondeat superior* was inapplicable. The city . . . is only liable when it can be fairly said that the city itself is the wrongdoer." *Collins v. Harker Heights*, 112 S.Ct. 1061, 1067 (1992). The common thread found throughout this Court's municipal liability decisions, therefore, rests on the notion that

liability under § 1983 does not attach unless a clear causal connection exists between particular policies or actions of a governmental body and the constitutional injury at issue.

While these cases each addressed the circumstances in which a local governmental body may be held responsible for civil rights violations that one of its employees commits, the same causation principles would seem to apply when a plaintiff seeks to impose civil rights liability on individual government officials sued for injuries that their subordinates directly inflict, particularly since, as this Court has observed, "we have rejected *respondeat superior* as a basis for holding a *state actor* liable under § 1983 . . . ." *Jett v. Dallas Independent School District*, 491 U.S. 701, 736 (1989) (emphasis added). Past decisions of this Court in analogous settings suggest as much.

In *Rizzo v. Goode*, 423 U.S. 362 (1976), for example, this Court reversed the award of § 1983 relief against supervisory officials when "no affirmative link" was made connecting any specified policies or acts of those officials to the police misconduct that directly caused the plaintiffs' injuries. See 423 U.S. at 371. Similarly, in *Martinez v. California*, this Court held that state officials did not "deprive" a 15-year-old girl of her life when she was murdered by a parolee five months after his release, because her death was "too remote a consequence of the parole officers' action to hold them responsible under the federal civil rights law." 444 U.S. at 285. These cases, particularly when they are considered against the backdrop of this Court's municipal liability decisions, reflect the understanding that a state or local government official cannot be held liable for the constitutional torts of a subordinate in the absence of a

strong connection between the official's action (or inaction) and the plaintiff's injury.

This Court's decisions in damages actions alleging unconstitutional conduct by federal officials, *see, e.g., Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971); *Carlson v. Green*, 446 U.S. 14 (1980), demonstrate that, if anything, the standard of liability is higher when suit is brought against individual officials as opposed to a governmental body. Indeed, this Court just held that the objective deliberate indifference standard set forth in *Canton v. Harris*, while appropriate "for the quite different purpose of identifying the threshold for holding a city responsible for the constitutional torts committed by its inadequately trained agents," does not apply when determining the liability of individual prison officials under the Eighth Amendment. *Farmer v. Brennan*, 62 U.S.L.W. 4446, 4450 (U.S. June 6, 1994) (quotations and citation omitted). Rejecting the argument "that a prison official who was unaware of a substantial risk of harm to an inmate may nevertheless be held liable under the Eighth Amendment if the risk was obvious and a reasonable prison official would have noticed it," *id.* at 4450, the Court instead stated that no such liability exists "unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 4449.

The *Farmer* decision, while postdating the Fourth Circuit's decision in this case, is the latest in the long line of cases discussed above in which this Court has recognized -- tacitly or explicitly -- the high threshold that a plaintiff must meet in order to obtain monetary relief

against a government official. The court of appeals in this case, however, rejected the dominant theme of these cases by applying a substantially more relaxed theory of "but for" causation and holding that despite petitioner's transfer fifteen months before respondents' decedent's injury, that injury "was a natural and foreseeable consequence of [petitioner's] failure to investigate, or even to address, the pervasive violent propensities of one of his officers." App. at 16. That tort theory of causation is in conflict with this Court's decisions and is inapplicable in a federal civil rights action.

"The 'causation' requirement of § 1983 is a matter of statutory interpretation rather than of common tort law." *Springfield v. Kibbe*, 480 U.S. at 269 (O'Connor, J., dissenting). While the liability theory that the majority opinion below applied may suffice under state tort law principles, *see, e.g., Palsgraf v. Long Island Railroad Co.*, 248 N.Y. 339, 162 N.E. 99 (1928), it falls far short of what the federal civil rights statute requires because establishing that a failure to supervise "was the 'cause' of constitutional injury at issue . . . entails more than simply showing 'but for' causation." *Canton v. Harris*, 489 U.S. at 393 (O'Connor, J., concurring and dissenting in part). *See also Pembaur v. Cincinnati*, 475 U.S. at 482 n.11 ("Although [in *Oklahoma City v. Tuttle*] there was no opinion for the Court on this question, both the plurality and the opinion concurring in the judgment found plaintiff's submission inadequate because she failed to establish that the unconstitutional act was taken *pursuant to* a municipal policy rather than simply resulting from such a policy in a 'but for' sense.") (emphasis in original).

At a minimum, a government official's inaction in the face of a subordinate's wrongful acts "subjects, or

causes to be subjected," a plaintiff to the deprivation of a right under § 1983 only when it is "so obvious" and "so likely" that the inaction will "result in the violation of constitutional rights. . . ." *Canton v. Harris*, 489 U.S. at 390. *See also Farmer v. Brennan*, 62 U.S.L.W. at 4450 (holding in the Eighth Amendment context that liability exists only when the official has "failed to act despite his knowledge of a substantial risk of serious harm."). But in light of the fifteen month gap between petitioner's transfer and his former subordinate's actions, to hold that petitioner's past omissions "constituted the 'moving force' in bringing about the [subordinate] officer's unconstitutional conduct, notwithstanding the large number of intervening causes also at work up to the time of the constitutional harm, appears to be largely a matter of speculation and conjecture." *Springfield v. Kibbe*, 480 U.S. at 268 (O'Connor, J., dissenting). Simply put, if the unlawful acts in this case confer liability upon petitioner, "the result would be indistinguishable from *respondeat superior* liability." *St. Louis v. Praprotnik*, 485 U.S. at 126.

Even analogizing to traditional tort principles shows the lack of any causal connection between petitioner's alleged omissions and the death of respondents' decedent. The Restatement (Second) of Torts § 452(2) (1965) provides that "[w]here, because of lapse of time or otherwise, the duty to prevent harm to another threatened by the actor's negligent conduct is found to have shifted from the actor to a third person, the failure of the third person to prevent such harm is a superseding cause." The Fourth Circuit noted that following petitioner's transfer, several individuals informed his successor about his former subordinate's past and continuing use of excessive force against arrestees. App. at 8-9. Under the Restatement, that

successor's failure to act, which the court of appeals held did not give rise to any § 1983 liability, App. at 17-18, constitutes "a superseding cause, which will relieve the original actor of liability." Restatement (Second) of Torts § 452, Comment *f*, p. 490.

Observing that "[p]roximate cause is a regrettably imprecise concept," Judge Hall in his dissenting opinion below nevertheless concluded that "§ 1983's 'affirmative causal link' rapidly deteriorates with passage of time, especially where a new, self-sufficient impetus for the eventual injury develops." App. at 29. As in *Martinez v. California*, respondents' decedent's death, occurring so many months after petitioner's transfer and his subsequent replacement with a new supervisor, was "too remote" a consequence of petitioner's prior inactions to hold him responsible under § 1983. 444 U.S. at 285.

As this Court has noted, "[t]o adopt lesser standards of fault and causation would open municipalities to unprecedented liability under § 1983." *Canton v. Harris*, 489 U.S. at 391. The Fourth Circuit's decision has equally far-reaching ramifications that "implicate serious questions of federalism." *Id.* at 392. It significantly broadens the liability exposure of state and local government officials by holding them accountable, utilizing a state tort law theory of causation, for actions that occur long after these officials surrender authority over the person whose conduct provides the basis of the § 1983 claim. That causation analysis greatly erodes "the well-established rule that the Government has traditionally been granted the widest latitude in the dispatch of its own internal affairs," *Rizzo v. Goode*, 423 U.S. at 378-79 (quotations omitted), and it does so without advancing any legitimate purpose.

The reason for holding a government official liable for constitutional wrongs caused by a failure to supervise "is bottomed on the principle that in some contexts failure of an official to safeguard against constitutional transgressions *by those under his control* constitutes an actionable wrong. . . ." *Haynesworth v. Miller*, 820 F.2d at 1259-60 (emphasis added). *Cf. Monell v. Dept. of Social Services*, 436 U.S. at 694 n.58 ("By our decision in *Rizzo v. Goode*, . . . we would appear to have decided that the mere right to control without any control or direction having been exercised and without any failure to supervise is not enough to support § 1983 liability."). *See also Farmer v. Brennan*, 62 U.S.L.W. at 4453 (suggesting that individual prison officials may be entitled to summary judgment on remand if they can show they had "no direct responsibility" over or "power to control" conditions giving rise to inmate's Eighth Amendment claim). Under the Fourth Circuit's analysis, however, an official may be held monetarily liable under § 1983 for the acts of a former subordinate despite the lack of any control over that individual.

This case thus presents substantial issues that are of great importance to state and local governments across the country. This Court should review the Fourth Circuit's decision, therefore, and establish the standards that the lower courts are to apply when addressing the issue of individual supervisory liability.

CONCLUSION

For the reasons stated, the petition for writ of certiorari should be granted.

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